

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
HECTOR LOPEZ,

Plaintiff,

**Case No.: 07 cv 10707(PKL)**

-against-

RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC.,

**DECLARATION IN  
OPPOSITION TO REMAND**

Defendants.

-----X

State of New York     )  
                              ) ss.  
County of Nassau     )

Todd C. Rubenstein, an attorney admitted to practice before the bar of this Court hereby declares under penalties of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an attorney with Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP, counsel for defendants Richard Wells and New England Motor Freight, Inc. in the above entitled action, and am fully familiar with the facts and proceedings herein.

2. I submit this declaration, along with the accompanying Response and Memorandum of Law and Affidavit of Nancy Blakeman, all in strenuous opposition to plaintiff's motion for remand.

3. Annexed hereto as Exhibit "A" is a true and complete copy of plaintiff's amended complaint, with notations indicating it was filed with the Bronx County Clerk on November 29, 2007 at 10:18 a.m.

4. Annexed hereto as Exhibit "B" is a true and complete copy of the Notice of Removal with Exhibits A through D, filed with this Court on November 30, 2007.



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Todd C. Rubenstein (TR8884)

Abrams, Fensterman, Fensterman, Eisman,  
Greenberg, Formato & Einiger, LLP  
Attorneys for Defendants  
RICHARD WELLS and NEW ENGLAND  
MOTOR FREIGHT, INC.  
1111 Marcus Avenue, Suite 107  
Lake Success, New York 141042  
516-328-2300

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

**HECTOR LOPEZ,**

**Plaintiff,**

**-against-**

**AMENDED  
COMPLAINT**

**Index No.: 24736-06**

**RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC.,**

**Defendants.**

1. The Plaintiff above named by KEVIN B. FAGA, ESQ., attorney, complaining of the Defendants respectfully shows to the Court and alleges:

**AS AND FOR THE FIRST CAUSE OF ACTION**

2. That at all times hereinafter mentioned, the Plaintiff, HECTOR LOPEZ, was and still is an individual residing in the State of New York, County of Bronx, at 2145 Chatterton Avenue, Apt. 2R, Bronx, New York 10472.
3. That upon information and belief, at all times hereinafter mentioned, the Defendant, RICHARD WELLS, (hereinafter referred to as "WELLS"), was and still is an individual residing at 58 Wells Terrace, Meriden, Connecticut 06450.
4. That upon information and belief, at all times hereinafter mentioned, the Defendant, NEW ENGLAND MOTOR FREIGHT, INC., (hereinafter referred to

as "NEW ENGLAND"), was and still is a foreign corporation; a domestic profit corporation of the State of New Jersey, doing business within the State of New York, with principal offices located at 1-71 North Avenue East, Elizabeth, New Jersey 07201 and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.

5. That upon information and belief, at the time of impact with the Plaintiff, Defendant WELLS was an agent, officer, employee, contractor, subcontractor or otherwise employed by Defendant NEW ENGLAND.
6. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND owned and continues to own a certain 1998 Volvo, bearing New Jersey state Plate Number AE849B, (hereinafter referred to as the "Vehicle").
7. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND insured and continues to insure the Vehicle.
8. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND controlled and continues to control the Vehicle.
9. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND maintained and repaired and continues to maintain and repair the Vehicle.

10. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND managed and supervised and continues to manage and supervise the Vehicle.
11. That upon information and belief, on or about September 22, 2006 the Defendant, RICHARD WELLS, was acting as an agent, officer, employee, contractor, or sub-contractor of Defendant NEW ENGLAND.
12. That upon information and belief, on or about September 22, 2006 the Defendant, RICHARD WELLS, was driving Northbound on Interstate 87 and collided into the Plaintiff.
13. That upon information and belief, Defendant WELLS operated the Vehicle in a dangerous, unreasonable and reckless manner, in that the vehicle was operated in a manner that the Vehicle caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.
14. That upon information and belief, Defendant WELLS was at all times hereinafter mentioned in possession and control of the vehicle.
15. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87 in the County of Orange, State of New York, without any negligence on his part he was caused to be impacted by Defendant WELLS causing him to sustain the injuries hereinafter alleged.

16. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence of the Defendant, WELLS, and without any contributory negligence on the part of the Plaintiff, by reason that the vehicle was negligently not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and negligent manner; that the vehicle was kept and maintained by the Defendant in a unsafe, unreasonable, reckless and negligent manner; that the vehicle was kept and repaired by the Defendant in a unsafe, unreasonable, reckless and negligent manner; that the Defendant operated, controlled, maintained and repaired the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

17. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant WELLS and by the Defendant's operation, control, maintenance and repair of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

18. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to

suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

19. That by reason of the aforesaid, this Plaintiff has been damaged in a sum of exceeding the jurisdictional limits of all lower courts in an amount to be determined at trial.

**AS AND FOR THE SECOND CAUSE OF ACTION**

20. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 34 with the same force and effect as if fully set forth herein.

21. That upon information and belief, Defendant NEW ENGLAND operated the Vehicle in a dangerous, unreasonable and reckless manner in that the Vehicle was operated in a manner that the Vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

22. That upon information and belief, Defendant NEW ENGLAND was at all times hereinafter mentioned in possession and control of the Vehicle.

23. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87 in the County of Orange, State of New

York, without any negligence on his part he was caused to be impacted by the Vehicle owned, operated and controlled by the Defendant NEW ENGLAND causing him and sustain the injuries hereinafter alleged.

24. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant NEW ENGLAND and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the Vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the Vehicle in an unsafe, unreasonable, reckless and negligent manner; that the Defendant operated the Vehicle in an unsafe, unreasonable, reckless and negligent manner; that the Vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the Vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the Vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the Vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the Vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the Vehicle in violation of the



statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

25. That the Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant NEW ENGLAND and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the Vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.


26. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

27. That by reason of the aforesaid, this Plaintiff has been damaged in a sum of exceeding the jurisdictional limits of all lower courts in an amount to be determined at trial.

**WHEREFORE**, Plaintiff demands judgment against the Defendants on the first cause of action in a sum exceeding the jurisdictional limits of all lower courts to be determined at trial, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the second cause of action in a sum exceeding the jurisdictional limits of all lower courts to be determined at trial, together with the interest, cost and disbursements of this action, and all other such relief that this Court may deem just and proper.

**Dated:**        **Bronx, New York**  
                 **October 19, 2007**

**FAGA SAVINO, LLP**

By:   
**KEVIN B. FAGA, ESQ.**  
*Attorneys for the Plaintiff*  
1200 Waters Place, Suite 301  
Bronx, New York 10461  
(718) 931-6000

**TO:** **Todd C. Rubenstein, Esq.**  
**Abrams, Fensterman, Fensterman, Eisman,**  
**Greenburg, Formato & Rindger LLP.**  
*Attorneys for the Defendants*  
1111 Marcus Avenue, Suite 107  
Lake Success, New York 11042

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

Index No.: 24736/06

-----X

**HECTOR LOPEZ,****Plaintiff,****-against-****AFFIRMATION OF  
SERVICE****RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC.,****Defendants.**

-----X

James L. Hyer, Esq., an attorney duly admitted to practice law before the courts of the State of New York, under penalty of perjury affirms the following to be true:

I am not a party to the above-captioned action.

On November 16, 2007, I served the within AMENDED COMPLAINT and Supporting Papers on the following persons:

TODD C. RUBENSTEIN, ESQ.  
ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, GREENBERG, FORMATO & EINIGER, LLP.  
1111 Marcus Avenue, Suite 107  
Lake Success, New York 11042

By placing same in a pre-paid post wrapper and depositing same into a mail box maintained exclusively by the United States Postal Service at 1200 Waters Place, Bronx, New York.

Dated: Bronx, New York  
November 16, 2007

  
\_\_\_\_\_  
JAMES L. HYER, ESQ.

STATE OF NEW YORK, COUNTY OF BRONX

ss.:

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

X  
ATTORNEY'S  
CERTIFICATION

certify that the annexed AMENDED COMPLAINT have been compared  
by me with the original and found to be a true and complete copy thereof.

ATTORNEY'S  
VERIFICATION

say that: I am the attorney of record, or counsel with the attorney(s) of record for

I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters  
therein which are stated to be alleged on information and belief, and as to those matters I  
believe them to be true. My belief, as those matters therein not stated upon knowledge, is  
based upon the following:

I affirm that the foregoing statements are true under penalties of perjury.

Dated: October 23, 2007  
Bronx, New York

\_\_\_\_\_  
KEVIN B. FAGA, ESQ.

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

Index No.: 24736/06

**HECTOR LOPEZ,**

**Plaintiff,**

**-against-**

**RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG, and JON SHEVELL,**

**Defendants.**

**AMENDED COMPLAINT**

*Attorney for*

**FAGA SAVINO, LLP.  
BY: KEVIN B. FAGA, ESQ.  
Plaintiff  
1200 Waters Place, Suite 301  
Bronx, New York 10461  
(718) 931-6000**

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous  
Dated: 10/23/2007

Signature

**KEVIN B. FAGA, ESQ.**

Service of a copy of the within  
Dated:

Is hereby admitted.

Attorney(s) for

**PLEASE TAKE NOTICE**

☐  
**NOTICE OF  
ENTRY**

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on , 19

☐  
**NOTICE OF  
SETTLEMENT**

that an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court, on  
, at M

Dated:

*Attorney for*

**FAGA SAVINO, LLP,  
KEVIN B. FAGA, ESQ.  
Plaintiff  
1200 Waters Place, Suite 301  
Bronx, New York 10461**

**JUDICIAL OFFICE**  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

HECTOR LOPEZ,

Plaintiff,

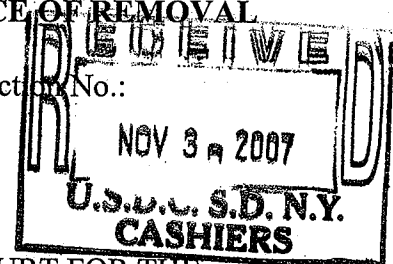
-against-

RICHARD WELLS and NEW ENGLAND MOTOR  
FREIGHT, INC.

Defendants.

**NOTICE OF REMOVAL**

Civil Action No.:



To: THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

This Notice of Removal on behalf of defendants RICHARD WELLS and NEW  
ENGLAND MOTOR FREIGHT, INC. respectfully shows:

1. The above described action is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332 and is one which may be removed to this Court by petitioner, pursuant to the provisions of 28 U.S.C. § 1441 in that the matter in controversy allegedly exceeds the sum or value of \$75,000.00 exclusive of interest and costs.

2. On or about December 29, 2006 an action was commenced against defendants RICHARD WELLS, NEW ENGLAND MOTOR FREIGHT, INC., MYRON P. SHEVELL, JOHN KARLBERG, NANCY BLAKEMAN, CRAIG EISENBERG and JON SHEVELL, in the Supreme Court of the State of New York, Bronx County seeking Fifty Million (\$50,000,000.00) Dollars. *Copies of the Summons and Complaint are attached hereto and marked as Exhibit "A".*

3 On or about February 23, 2007 defendants RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC served their Notice of Appearance, Verified

Answer and Affirmative defenses to the Complaint<sup>1</sup>. *Copies of the Verified Answer and Defenses are attached hereto and marked as Exhibit "B".*

4. On or about November 5, 2007 the Bronx County Clerk entered a Stipulation and Order amending the caption so that only RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC remain as named defendants, and striking all causes of action and allegations of negligence as to the discontinued defendants. The Stipulation and Order further required plaintiff to file an amended complaint to reflect the contents of the Order<sup>2</sup>. *Stipulation and Order is attached hereto as Exhibit "C".*

5. On or about November 16, 2007 plaintiff served his amended complaint upon defendants RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC, making this case eligible for Removal to this Court<sup>3</sup>. *Amended Complaint annexed hereto as Exhibit "D"*

6. As set forth in the amended complaint, plaintiff is a citizen of New York and resident of Bronx County, specifically 2145 Chatterton Avenue, Bronx, New York 10453, defendant RICHARD WELLS is a citizen of Connecticut, specifically 58 Wells Terrace, Meriden, Connecticut 06450, and defendant NEW ENGLAND MOTOR FREIGHT, INC. was, and at the time this action was commenced, and still is, a

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<sup>1</sup> The responsive pleading was filed by Robert M., Blakeman & Associates. On March 8, 2007 Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP filed and served a Consent to Change Attorney on behalf of moving defendants, and has represented moving defendants going forward.

<sup>2</sup> On or about February 13, 2007 plaintiff filed a Notice of Discontinuance with the Bronx County Clerk as to defendants MYRON P. SHEVELL, JOHN KARLBERG, NANCY BLAKEMAN, CRAIG EISENBERG and JON SHEVELL<sup>2</sup>. Upon information and belief the Notice was never served upon the discontinued defendants as required by CPLR § 3217(a)(1) and no affidavits of service are on file with the Bronx County Clerk. The Notice did not alter the caption in any way and did not serve to dismiss the paragraphs asserting the causes of action and allegations of wrongdoing as to the said defendants. The Stipulation and Order was the result of a Motion filed by defendants RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC. seeking the relief reflected in same.

<sup>3</sup> Plaintiff's Complaint asserted damages of \$50 million. The Amended Complaint was not permitted to include a specific claim for damages as mandated by CPLR § 3017(c).

corporation organized under the laws of the State of New Jersey, having its principal office at 1-71 North Avenue East, Elizabeth, New Jersey 07201<sup>4</sup>.

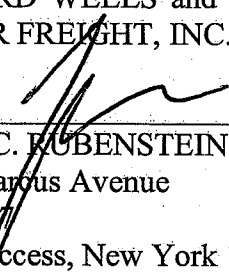
7. There have been no proceedings held in the Supreme Court of the State of New York-Bronx County with regard to this matter, except for a Preliminary Conference on discovery resulting in an order and the Motion seeking the relief that was ultimately granted by Stipulation and Order referenced above.

**WHEREFORE**, defendants RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC. request that this action now pending against it in the Supreme Court of the State of New York, Bronx County, be removed therefrom to this Court.

Dated: Lake Success, New York  
November 29, 2007

Yours etc.,

ABRAMS, FENSTERMAN,  
FENSTERMAN, EISMAN, GREENBERG,  
FORMATO & EINIGER, LLP  
Attorneys for Defendants  
RICHARD WELLS and NEW ENGLAND  
MOTOR FREIGHT, INC.

BY:   
TODD C. RUBENSTEIN (TR-8884)  
1111 Marcus Avenue  
Suite 107  
Lake Success, New York 141042  
516-328-2300

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<sup>4</sup> Prior to the Stipulation and Order, and Amended Complaint whereby the caption removed other defendants and dismissed all causes of action relating to them there was not complete diversity, and this case was not ripe for removal.





SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No.:  
Date Filed:

HECTOR LOPEZ,

Plaintiff,

-against-

SUMMONS

RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG, and JON SHEVELL,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this Action and to serve a copy of your Answer on the plaintiff's attorneys within 20 days after service of the summons (or within 30 days after service is complete if the summons is not personally delivered to you within the State of New York), and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: December 28, 2006  
Bronx, New York

FAGA SAVINO, LLP

By:   
JAMES L. HYER, ESQ.

Attorneys for Plaintiff

1200 Waters Place, Suite 301  
Bronx, NY 10461  
(718) 931-6000

06 DEC 29 AM 11:38  
COUNTY CLERK  
BRONX COURT

RECEIVED

24736-06

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No.:  
Date Filed:

\_\_\_\_\_  
HECTOR LOPEZ,

Plaintiff,

COMPLAINT

-against-

RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG, and JON SHEVELL,

Defendants.  
\_\_\_\_\_X

1. The Plaintiff above named by JAMES L. HYER, ESQ., attorney, complaining of  
the Defendants respectfully shows to the Court and alleges:

06 DEC 29 4:11:58  
COUNTY CLERK  
BRONX COUNTY

RECEIVED

AS AND FOR THE FIRST CAUSE OF ACTION

2. That at all times hereinafter mentioned, the Plaintiff, HECTOR LOPEZ, was and still is an individual residing in the State of New York, County of Bronx, at 2145 Chatterton Avenue, Apt. 2R, Bronx, New York 10472.
3. That upon information and belief, at all times hereinafter mentioned, the Defendant, RICHARD WELLS, (hereinafter referred to as "WELLS"), was and still is an individual residing at 58 Wells Terrace, Meriden, Connecticut 06450.

4. That upon information and belief, at all times hereinafter mentioned, the Defendant, NEW ENGLAND MOTOR FREIGHT, INC., (hereinafter referred to as "NEW ENGLAND"), was and still is a foreign corporation, a domestic profit corporation of the State of New Jersey, doing business within the State of New York, with principal offices located at 1-71 North Avenue East and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.

That upon information and belief, at the time of impact with the Plaintiff, Defendant WELLS was an agent, officer, employee, contractor, subcontractor or otherwise employed by Defendant NEW ENGLAND.

6. That upon information and belief, at all times hereinafter mentioned, the Defendant, MYRON P. SHEVELL, was and still is the Chief Executive Officer of Defendant, NEW ENGLAND, with principal offices located at 1-71 North Avenue East and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.

7. That upon information and belief, at all times hereinafter mentioned, the Defendant, MYRON P. SHEVELL, was and still is responsible for the hiring, training, management, supervision and control of agents, officers, employees, contractors, subcontractors or parties otherwise employed by Defendant NEW ENGLAND.

8. That upon information and belief, at all times hereinafter mentioned, the Defendant, MYRON P. SHEVELL, was and still is responsible for the purchase, operation, control, maintenance, repair, management, and supervision of vehicles owned by Defendant NEW ENGLAND.
9. That upon information and belief, at all times hereinafter mentioned, the Defendant, JOHN KARLBERG, was and still is President of Defendant, NEW ENGLAND, with principal offices located at 1-71 North Avenue East and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.
10. That upon information and belief, at all times hereinafter mentioned, the Defendant, JOHN KARLBERG, was and still is responsible for the hiring, training, management, supervision and control of agents, officers, employees, contractors, subcontractors or parties otherwise employed by Defendant NEW ENGLAND.
11. That upon information and belief, at all times hereinafter mentioned, the Defendant, JOHN KARLBERG, was and still is responsible for the purchase, operation, control, maintenance, repair, management, and supervision of vehicles owned by Defendant NEW ENGLAND.
12. That upon information and belief, at all times hereinafter mentioned, the Defendant, NANCY BLAKEMAN, was and still is a Vice President of

Defendant, NEW ENGLAND, with principal offices located at 1-71 North Avenue East and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.

13. That upon information and belief, at all times hereinafter mentioned, the Defendant, NANCY BLAKEMAN, was and still is responsible for the hiring, training, management, supervision and control of agents, officers, employees, contractors, subcontractors or parties otherwise employed by Defendant NEW ENGLAND.

14. That upon information and belief, at all times hereinafter mentioned, the Defendant, NANCY BLAKEMAN, was and still is responsible for the purchase, operation, control, maintenance, repair, management, and supervision of vehicles owned by Defendant NEW ENGLAND.

15. That upon information and belief, at all times hereinafter mentioned, the Defendant, CRAIG EISENBERG, was and still is a Vice President of Defendant, NEW ENGLAND, with principal offices located at 1-71 North Avenue East and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.

16. That upon information and belief, at all times hereinafter mentioned, the Defendant, CRAIG EISENBERG, was and still is responsible for the hiring, training, management, supervision and control of agents, officers, employees,

contractors, subcontractors or parties otherwise employed by Defendant NEW ENGLAND.

17. That upon information and belief, at all times hereinafter mentioned, the Defendant, CRAIG EISENBERG, was and still is responsible for the purchase, operation, control, maintenance, repair, management, and supervision of vehicles owned by Defendant NEW ENGLAND.
18. That upon information and belief, at all times hereinafter mentioned, the Defendant, JON SHEVELL, was and still is a Vice President of Defendant, NEW ENGLAND, with principal offices located at 1-71 North Avenue East and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.
19. That upon information and belief, at all times hereinafter mentioned, the Defendant, JON SHEVELL, was and still is responsible for the hiring, training, management, supervision and control of agents, officers, employees, contractors, subcontractors or parties otherwise employed by Defendant NEW ENGLAND.
20. That upon information and belief, at all times hereinafter mentioned, the Defendant, JON SHEVELL, was and still is responsible for the purchase, operation, control, maintenance, repair, management, and supervision of vehicles owned by Defendant NEW ENGLAND.

21. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND owned and continues to own the vehicle.

22. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND insured and continues to insure the vehicle.

23. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND controlled and continues to control the vehicle.

24. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND maintained and repaired and continues to maintain and repair the vehicle.

25. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND managed and supervised and continues to manage and supervise the vehicle.

26. That upon information and belief, on or about September 22, 2006 the Defendant, RICHARD WELLS, was acting as an agent, officer, employee, contractor, or sub-contractor of Defendant NEW ENGLAND.



27. That upon information and belief, on or about September 22, 2006 the Defendant, RICHARD WELLS, was driving Northbound on Interstate 87 and collided into the Plaintiff.

28. That upon information and belief, Defendant WELLS operated the vehicle in a dangerous, unreasonable and reckless manner, in that the vehicle was operated in a manner that the vehicle caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

29. That upon information and belief, Defendant WELLS was at all times hereinafter mentioned in possession and control of the vehicle.

30. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on his part he was caused to be impacted by Defendant WELLS causing him and sustain the injuries hereinafter alleged.

31. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence of the Defendant WELLS and without any contributory negligence on the part of the Plaintiff, by reason that the vehicle was negligently not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and negligent manner; that the vehicle was kept and maintained by the Defendant in a unsafe,

unreasonable, reckless and negligent manner; that the vehicle was kept and repaired by the Defendant in a unsafe, unreasonable, reckless and negligent manner; that the Defendant operated, controlled, maintained and repaired the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

32. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant WELLS and by the Defendant's operation, control, maintenance and repair of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

33. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

34. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR THE SECOND CAUSE OF ACTION**

35. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 34 with the same force and effect as if fully set forth herein.

36. That upon information and belief, Defendant NEW ENGLAND operated the vehicle in a dangerous, unreasonable and reckless manner in that the vehicle was operated in a manner that the vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

37. That upon information and belief, Defendant NEW ENGLAND was at all times hereinafter mentioned in possession and control of the vehicle.

38. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on her part he was caused to be impacted by Defendant NEW ENGLAND causing him and sustain the injuries hereinafter alleged.

39. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant NEW ENGLAND and

without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and negligent manner; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and negligent manner; that the vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

40. That the Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant NEW ENGLAND and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the

vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

41. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

42. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR THE THRID CAUSE OF ACTION**

43. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 42 with the same force and effect as if fully set forth herein.

44. That upon information and belief, Defendant MYRON P. SHEVELL operated the vehicle in a dangerous, unreasonable and reckless manner in that the vehicle was operated in a manner that the vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.
45. That upon information and belief, Defendant MYRON SHEVELL was at all times hereinafter mentioned in possession and control of the vehicle.
46. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on his part he was caused to be impacted by Defendant MYRON SHEVELL causing him and sustain the injuries hereinafter alleged.
47. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant MYRON SHEVELL and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and negligent manner; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and negligent manner; that the vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition;

that the vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

48. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant MYRON SHEVELL and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

49. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

50. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR THE FORTH CAUSE OF ACTION**

51. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 50 with the same force and effect as if fully set forth herein.

52. That upon information and belief, Defendant JOHN KARLBERG operated the vehicle in a dangerous, unreasonable and reckless manner in that the vehicle was operated in a manner that the vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.



53. That upon information and belief, Defendant JOHN KARLBERG was at all times hereinafter mentioned in possession and control of the vehicle.
54. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on his part he was caused to be impacted by Defendant JOHN KARLBERG causing him and sustain the injuries hereinafter alleged.
55. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant JOHN KARLBERG and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train

its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

56. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant JOHN KARLBERG and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

57. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

58. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR THE FIFTH CAUSE OF ACTION**

59. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 58 with the same force and effect as if fully set forth herein.

60. That upon information and belief, Defendant NANCY BLAKEMAN operated the vehicle in a dangerous, unreasonable and reckless manner in that the vehicle was operated in a manner that the vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

61. That upon information and belief, Defendant NANCY BLAKEMAN was at all times hereinafter mentioned in possession and control of the vehicle.

62. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on his part he was caused to be impacted by Defendant NANCY BLAKEMAN causing him and sustain the injuries hereinafter alleged.

63. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant NANCY BLAKEMAN and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

64. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant NANCY BLAKEMAN and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

65. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

66. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR THE SIXTH CAUSE OF ACTION**

67. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 67 with the same force and effect as if fully set forth herein.

68. That upon information and belief, Defendant CRAIG EISENBERG operated the vehicle in a dangerous, unreasonable and reckless manner in that the vehicle was operated in a manner that the vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

69. That upon information and belief, Defendant CRAIG EISENBERG was at all times hereinafter mentioned in possession and control of the vehicle.

70. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on his part he was caused to be impacted by Defendant CRAIG EISENBERG causing him and sustain the injuries hereinafter alleged.

71. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant CRAIG EISENBERG and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle was not kept under reasonable control by the

Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

72. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant CRAIG EISENBERG and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff

contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

73. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

74. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR THE SEVENTH CAUSE OF ACTION**

75. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 74 with the same force and effect as if fully set forth herein.

76. That upon information and belief, Defendant JON SHEVELL operated the vehicle in a dangerous, unreasonable and reckless manner in that the vehicle was



operated in a manner that the vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

77. That upon information and belief, Defendant JON SHEVELL was at all times hereinafter mentioned in possession and control of the vehicle.

78. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87, without any negligence on his part he was caused to be impacted by Defendant JOHN SHEVELL causing him and sustain the injuries hereinafter alleged.

79. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant JOHN SHEVELL and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant operated the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the

Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the vehicle in violation of the statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

80. The Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant JON SHEVELL and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.

81. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or

alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

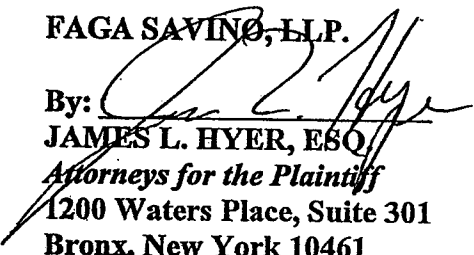
82. That by reason of the aforesaid, this Plaintiff has been damaged in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS.

WHEREFORE, Plaintiff demands judgment against the Defendants on the first cause of action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the second cause of action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the third cause of action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the forth cause of action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the fifth cause of action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the sixth cause of action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the seventh cause of

action in the sum of FIFTY MILLION (\$50,000,000.00) DOLLARS, together with the interest, cost and disbursements of this action, and any and all other such relief that this Court may deem just and proper.

**Dated:**            **Bronx, New York**  
                      **December 28, 2006**

**FAGA SAVINO, LLP.**

By:   
**JAMES L. HYER, ESQ.**  
*Attorneys for the Plaintiff*  
**1200 Waters Place, Suite 301**  
**Bronx, New York 10461**  
**(718) 931-6000**

**TO:**

**RICHARD WELLS**  
**58 Wells Terrace**  
**Meriden, Connecticut 06450**

**NEW ENGLAND MOTOR FREIGHT, INC.**  
**1-71 North Avenue East**  
**Elizabeth, New Jersey 07201**

**NEW ENGLAND MOTOR FREIGHT, INC.**  
**P.O. Box 1305**  
**Paramus, New Jersey 07653**

**MYRON SHEVELL.**  
**1-71 North Avenue East**  
**Elizabeth, New Jersey 07201**

**MYRON SHEVELL**  
**P.O. Box 1305**  
**Paramus, New Jersey 07653**

**JOHN KARLBERG**  
1-71 North Avenue East  
Elizabeth, New Jersey 07201

**JOHN KARLBERG**  
P.O. Box 1305  
Paramus, New Jersey 07653

**NANCY BLAKEMAN**  
1-71 North Avenue East  
Elizabeth, New Jersey 07201

**NANCY BLAKEMAN**  
P.O. Box 1305  
Paramus, New Jersey 07653

**CRAIG EISENBERG**  
1-71 North Avenue East  
Elizabeth, New Jersey 07201

**CRAIG EISENBERG**  
P.O. Box 1305  
Paramus, New Jersey 07653

**JON SHEVELL**  
1-71 North Avenue East  
Elizabeth, New Jersey 07201

**JON SHEVELL**  
P.O. Box 1305  
Paramus, New Jersey 07653

STATE OF NEW YORK, COUNTY OF BRONX

ss.:

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

X  
ATTORNEY'S  
CERTIFICATION

certify that the annexed SUMMONS AND COMPLAINT have been compared by me with the original and found to be a true and complete copy thereof.

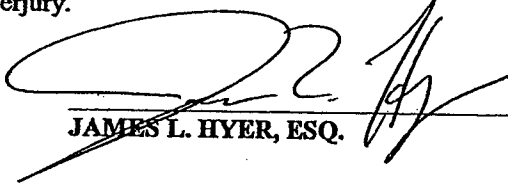
ATTORNEY'S  
VERIFICATION

say that: I am the attorney of record, or counsel with the attorney(s) of record for

I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as those matters therein not stated upon knowledge, is based upon the following:

I affirm that the foregoing statements are true under penalties of perjury.

Dated: December 28, 2006  
Bronx, New York

  
JAMES L. HYER, ESQ.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No.: 24736/06  
HECTOR LOPEZ,

Plaintiff,

NOTICE OF APPEARANCE AND  
VERIFIED ANSWER WITH  
AFFIRMATIVE DEFENSES

-against-

RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG and JON SHEVELL,

Defendant(s).

-----X

PLEASE TAKE NOTICE, that the above-named defendants, RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC., hereby appear in this action and that the undersigned have been retained as attorneys for said defendants and demand that you serve all papers in this proceeding upon them at the address stated below.

PLEASE TAKE FURTHER NOTICE, that said answering defendants hereby interpose the following answer to the plaintiff's Verified Complaint:

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

1. Answering defendants deny information and/or knowledge sufficient to form a belief as to the allegations contained in paragraphs marked "2", "21", "22", "23", "24", "25" and "29" of plaintiff's Complaint, and therefore deny same.

2. Answering defendants deny each and every allegation contained in paragraphs marked "7", "8", "9", "10", "11", "13",



"14", "16", "17", "19", "20", "27", "28", "30", "31", "32", "33" and "34" of plaintiff's Complaint.

3. Answering defendants deny each and every allegation contained in paragraph marked "3" of plaintiff's Complaint, except admit defendant, RICHARD WELLS, is an individual residing in Meriden, Connecticut.

4. Answering defendants deny each and every allegation contained in paragraph marked "4" of plaintiff's Complaint, except admit defendant, NEW ENGLAND MOTOR FREIGHT, INC., is a New Jersey corporation.

5. Answering defendants deny each and every allegation contained in paragraph marked "5" of plaintiff's Complaint, except admit that on September 22, 2006, defendant, RICHARD WELLS, was employed by NEW ENGLAND MOTOR FREIGHT, INC.

6. Answering defendants deny each and every allegation contained in paragraph marked "6" of plaintiff's Complaint, except admit that Myron P. Shevell is the Chief Executive Officer of NEW ENGLAND MOTOR FREIGHT, INC.

7. Answering defendants deny each and every allegation contained in paragraph marked "12" of plaintiff's Complaint, except admit that Nancy Blakeman is a Vice President of NEW ENGLAND MOTOR FREIGHT, INC.

8. Answering defendants deny each and every allegation contained in paragraph marked "15" of plaintiff's Complaint,

except admit that Craig Eisenberg is a Vice President of NEW ENGLAND MOTOR FREIGHT, INC.

9. Answering defendants deny each and every allegation contained in paragraph marked "18" of plaintiff's Complaint, except admit that Jon Shevell is a Vice President of NEW ENGLAND MOTOR FREIGHT, INC.

10. Answering defendants deny each and every allegation contained in paragraph marked "26" of plaintiff's Complaint, except admit that on September 22, 2006, defendant, RICHARD WELLS, was employed by NEW ENGLAND MOTOR FREIGHT, INC.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

11. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" in the First Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

12. Answering defendants deny each and every allegation contained in paragraphs marked "36", "37", "38", "39", "40", "41" and "42" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

13. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action and paragraphs "35" through "42" of the Second Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

14. Answering defendants deny each and every allegation contained in paragraphs marked "44", "45", "46", "47", "48", "49" and "50" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

15. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action, paragraphs "35" through "42" of the Second Cause of Action and paragraphs "43" through "50" of the Third Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

16. Answering defendants deny each and every allegation contained in paragraphs marked "52", "53", "54", "55", "56", "57" and "58" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION

17. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action, paragraphs "35" through "42" of the Second Cause of Action, paragraphs "43" through "50" of the Third Cause of Action and paragraphs "51" through "58" of the Fourth Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

18. Answering defendants deny each and every allegation contained in paragraphs marked "60", "61", "62", "63", "64", "65" and "66" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

19. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action,

paragraphs "35" through "42" of the Second Cause of Action, paragraphs "43" through "50" of the Third Cause of Action, paragraphs "51" through "58" of the Fourth Cause of Action and paragraphs "59" through "66" of the Fifth Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

20. Answering defendants deny each and every allegation contained in paragraphs marked "68", "69", "70", "71", "72", "73" and "74" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SEVENTH CAUSE OF ACTION

21. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action, paragraphs "35" through "42" of the Second Cause of Action, paragraphs "43" through "50" of the Third Cause of Action, paragraphs "51" through "58" of the Fourth Cause of Action, paragraphs "59" through "66" of the Fifth Cause of Action and "67" through "74" of the Sixth Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

22. Answering defendants deny each and every allegation contained in paragraphs marked "76", "77", "78", "79", "80", "81" and "82" of plaintiff's Complaint.

**AND AS FOR A FIRST AFFIRMATIVE DEFENSE**

23. The plaintiff's claims are barred, or in the alternative, the damages to which the plaintiff may be entitled are limited as may be applicable by the Doctrine of Sudden Emergency and/or Avoidable Consequences and/or Unavoidable Accident and/or Assumption of Risk.

**AND AS FOR A SECOND AFFIRMATIVE DEFENSE**

24. The Complaint filed herein fails to state a cause of action as against these answering defendants upon which relief can be granted.

**AND AS FOR A THIRD AFFIRMATIVE DEFENSE**

25. That any verdict in the within action, for past, present, and future medical care, dental care, custodial care, or rehabilitation services, loss of earnings or other economic loss, should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part of or from collateral source, in accordance with the provisions and limitations of Section 4545 (c) of the CPLR.

AND AS FOR A FOURTH AFFIRMATIVE DEFENSE

26. The plaintiff's sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

The plaintiff did not sustain serious injury as defined by §5102 of the Insurance Law of the State of New York, and her exclusive remedy therefore, is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

The plaintiff's cause of action is barred by Article 15, §5104 of the Insurance Law of the State of New York.

AND AS FOR A FIFTH AFFIRMATIVE DEFENSE

27. The plaintiff has failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in his complaint.

AND AS FOR A SIXTH AFFIRMATIVE DEFENSE

28. Although the defendants deny the allegations as to injuries and damages alleged, these injuries and damages, if any, were caused by intervening, preceding or superceding acts, conduct or negligence or third persons, parties, corporate entities and/or independent agencies over whom these answering defendants had no control or responsibility.

AND AS FOR A SEVENTH AFFIRMATIVE DEFENSE

29. Plaintiff's Complaint must be dismissed or transferred for forum non-conveniens and/or improper venue.

AND AS FOR A EIGHTH AFFIRMATIVE DEFENSE

30. That any injuries and/or damages sustained by plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

AND AS FOR A NINTH AFFIRMATIVE DEFENSE

31. The liability of these defendants, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

AND AS FOR AN TENTH AFFIRMATIVE DEFENSE

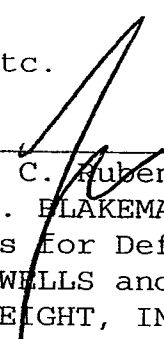
32. Plaintiff's Complaint does not comply with C.P.L.R. §3017(c) and must be dismissed and/or stricken as to the improper paragraphs and content.



WHEREFORE, defendants, RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC., demand judgment against plaintiff dismissing the Verified Complaint against these answering defendants, together with all costs and disbursements of this action.

Dated: Valley Stream, New York  
February 23, 2007

Yours, etc.

  
By: Todd C. Rubenstein  
ROBERT M. FLAKEMAN & ASSOCIATES  
Attorneys For Defendants  
RICHARD WELLS and NEW ENGLAND  
MOTOR FREIGHT, INC.  
108 South Franklin Avenue, Suite 1  
Valley Stream, NY 11580  
(516) 825-7575

TO: James L. Hyer, Esq.  
Faga Savino, LLP  
Attorneys for Plaintiff  
1200 Waters Place, Suite 301  
Bronx, New York 10461  
(718) 931-6000

VERIFICATION

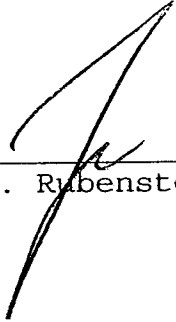
State of New York

ss.:

County of Nassau

I, Todd C. Rubenstein, Esq., being duly sworn, state:

I am the attorney for defendants in this action. The foregoing Verified Answer is true to my knowledge, except as to matters therein stated on information and belief and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my knowledge are correspondence and other writings furnished to me by defendants and interviews with officers and employees of defendant corporation. This verification is not made by defendant corporation because it is a foreign corporation.

  
\_\_\_\_\_  
Todd C. Rubenstein

Dated: February 23, 2007

AFFIDAVIT OF MAILING

STATE OF NEW YORK )

ss.:

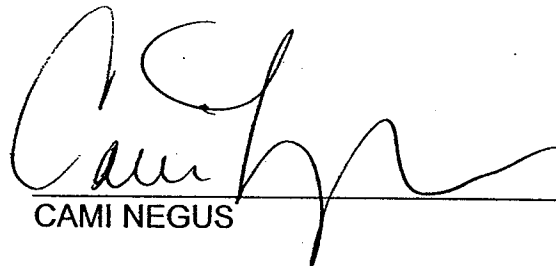
COUNTY OF NASSAU )

CAMI NEGUS, duly sworn, deposes and says that:

1. I am not a party to the within action, am over 18 years of age, and reside in Albertson, New York.

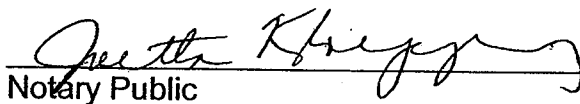
2. On the 27<sup>th</sup> day of September, 2007, I served the within NOTICE OF MOTION; AFFIRMATION AND EXHIBITS "A" THROUGH "C" by enclosing a copy of same in a postage paid envelope and depositing same in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, and was addressed to the last known residence as follows:

James L. Hyer, Esq.  
Faga Savino, LLP  
1200 Waters Place, Suite 301  
Bronx, New York 10461

  
\_\_\_\_\_

CAMI NEGUS

Sworn to before me this  
27<sup>th</sup> day of September, 2007

  
\_\_\_\_\_  
Notary Public

**JOETTA KLOEPPING**  
Notary Public, State of New York  
No. 30-4764166  
Qualified in Nassau County  
Commission Expires March 30, 2010



**SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX**

-----X  
**HECTOR LOPEZ,**

**Plaintiff,**

**Index No.: 0024736/06**

**-against-**

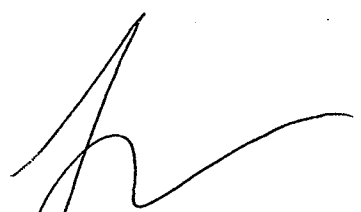
**ORDER WITH  
NOTICE OF ENTRY**

**RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KALBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG and JON SHEVELL,**

**Defendants.**  
-----X

**PLEASE TAKE NOTICE** that the within is a true copy of an Order duly made on the 29<sup>th</sup> day of October, 2007 and entered in the office of the clerk of the within named court on the 5<sup>th</sup> day of November, 2007.

Dated: Lake Success, New York  
November 14, 2007

  
\_\_\_\_\_  
Todd C. Rubenstein, Esq.  
Abrams, Fensterman, Fensterman, Eisman,  
Greenberg, Formato & Einiger, LLP  
Attorney for Defendants-Richard Wells and  
New England Motor Freight, Inc.  
1111 Marcus Avenue, Suite 107  
Lake Success, New York 11042  
(516) 328-2300

TO: James L. Hyer, Esq.  
Faga Savino, LLP  
Attorneys for Plaintiff  
1200 Waters Place, Suite 301  
Bronx, New York 10461

PART 01

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX:

Case Disposed ☐  
 Settle Order ☐  
 Schedule Appearance ☐

LOPEZ, HECTOR

Index N<sup>o</sup>. 0024736/2006

-against-

Hon. DIANNE T. RENWICK

WELLS, RICHARD

Justice.

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, AMEND PLEADINGS  
 Noticed on October 26 2007 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

**MOTION IS GRANTED PURSUANT TO THE  
 ATTACHED STIPULATION AND ORDER.**

Respectfully Referred to:

Dated:

Dated: OCT 29 2007

Hon.

DIANNE T. RENWICK, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

held in and for the County of the  
Bronx, at the Courthouse thereof,  
located at 851 Grand Concourse  
Bronx, New York 10451, on the  
29th day of October, 2007

HECTOR LOPEZ,

Plaintiff,

Index No. 24736/06

-against-

STIPULATION  
AND ORDER

RIHARD WELLS, NEW ENGLAND MOTOR,  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG and JON SHEVELL,

Defendants,

10/26  
241

WHEREAS Defendants, RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC., (hereinafter "Defendants") have served and filed a Notice of Motion to Amend Caption and Strike Causes of Action and Prayer for Damages, said motion presently returnable October 26, 2007;

WHEREAS on February 13, 2007, the Plaintiff, by and through his counsel, James L. Hyer, Esq. of Faga Savino, LLP. Filed a Notice of Discontinuance as to Defendants Myron P. Shevell, John Karlberg, Nancy Blakeman, Craig Eisenberg and Jon Shevell; and

WHEREAS the parties have come to a resolution on the subject matter of the aforementioned applications, and with the Court's approval and acceptance, it is stipulated and ordered as follows:

1. The caption to the Plaintiff's Complaint shall be amended by the Clerk of the Court to reflect the dismissal of Myron P. Shevell, John Karlberg, Nancy Blakeman, Craig Eisenberg and Jon Shevell as defendants. The caption, as it is currently stated, reads as follows:

HECTOR LOPEZ,

Plaintiff,

Index No. 24736/06

-against-

RICHARD WELLS, NEW ENGLAND MOTOR,  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG and JOHN SHEVELL,

Defendants,

The Caption shall now read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

HECTOR LOPEZ,

Plaintiff,

Index No. 24736/06

-against-

RICHARD WELLS, and NEW ENGLAND MOTOR,  
FREIGHT, INC.,

Defendants.



2. Paragraphs # 6 through and including # 20 of the First Cause of Action of the Plaintiff's Complaint are stricken;

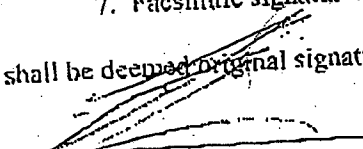
3. Paragraphs #34 and #42 alleging damages of FIFTY MILLION (50,000,000.00) DOLLARS are stricken, and in their place shall be inserted "That by reason of the aforesaid, the Plaintiff has been damaged in an amount that exceeds the jurisdictional limits of all lower courts to be determined at trial.

4. Paragraphs # 43 through and including # 82 inclusive of the Third, Fourth, Fifth, Sixth and Seventh Cause of Action of Plaintiff's Complaint, are stricken;

5. The prayer for damages in the amount of FIFTY MILLION (50,000,000.00) DOLLARS in the "WHEREFORE" clause of the Plaintiff's Complaint as to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> Causes of Action are stricken, and in their place, for the surviving causes of action, shall be inserted "That by reason of the aforesaid, the Plaintiff has been damaged in an amount that exceeds the jurisdictional limits of all lower courts to be determined at trial.

6. Plaintiff is given leave and shall file and serve within thirty (30) days, and Amended Complaint in accordance with the consents of this Stipulation and Order, but substantially identical to the initial Complaint in all other respects.

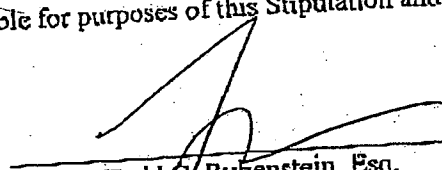
7. Facsimile signatures shall be acceptable for purposes of this Stipulation and Order and shall be deemed original signatures.

  
Kevin B. Faga, Esq.  
Faga Savino, LLP  
Attorneys for Plaintiff  
1200 Waters Place  
Suite 301  
Bronx, New York 10461

Dated: 10/24/07

"SO-ORDERED":

  
The Hon. DIANNE T. RENWICK

  
Todd C. Rubenstein, Esq.  
Abrams, Fensterman, Fensterman, Eisman,  
Greenberg, Formato, & Einiger, LLP  
1111 Marcus Avenue, Suite 107  
Attorneys for Defendants, Richard Wells  
and New England Motor Freight, Inc.

Dated: \_\_\_\_\_

OCT 29 2007.

AFFIDAVIT OF MAILING

STATE OF NEW YORK )

ss.:

COUNTY OF NASSAU )

CAMI NEGUS, duly sworn, deposes and says that:

1. I am not a party to the within action, am over 18 years of age, and reside in Albertson, New York.

2. On the 15<sup>th</sup> day of November, 2007, I served the within ORDER WITH NOTICE OF ENTRY by enclosing a copy of same in a postage paid envelope and depositing same in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, and was addressed to the last known residence as follows:

James L. Hyer, Esq.  
Attorneys for Plaintiff  
Faga Savino, LLP  
1200 Waters Place, Suite 301  
Bronx, New York 10461

  
CAMI NEGUS

Sworn to before me this  
15<sup>th</sup> day of November, 2007

  
Notary Public

**JOETTA KLOEPPING**  
Notary Public, State of New York  
No. 30-4764166  
Qualified in Nassau County  
Commission Expires March 30, 2010



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No.: 24736/06  
HECTOR LOPEZ,

Plaintiff,

NOTICE OF APPEARANCE AND  
VERIFIED ANSWER WITH  
AFFIRMATIVE DEFENSES

-against-

RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC., MYRON P. SHEVELL,  
JOHN KARLBERG, NANCY BLAKEMAN,  
CRAIG EISENBERG and JON SHEVELL,

Defendant(s).

-----X

PLEASE TAKE NOTICE, that the above-named defendants, RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC., hereby appear in this action and that the undersigned have been retained as attorneys for said defendants and demand that you serve all papers in this proceeding upon them at the address stated below.

PLEASE TAKE FURTHER NOTICE, that said answering defendants hereby interpose the following answer to the plaintiff's Verified Complaint:

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

1. Answering defendants deny information and/or knowledge sufficient to form a belief as to the allegations contained in paragraphs marked "2", "21", "22", "23", "24", "25" and "29" of plaintiff's Complaint, and therefore deny same.

2. Answering defendants deny each and every allegation contained in paragraphs marked "7", "8", "9", "10", "11", "13",

"14", "16", "17", "19", "20", "27", "28", "30", "31", "32", "33" and "34" of plaintiff's Complaint.

3. Answering defendants deny each and every allegation contained in paragraph marked "3" of plaintiff's Complaint, except admit defendant, RICHARD WELLS, is an individual residing in Meriden, Connecticut.

4. Answering defendants deny each and every allegation contained in paragraph marked "4" of plaintiff's Complaint, except admit defendant, NEW ENGLAND MOTOR FREIGHT, INC., is a New Jersey corporation.

5. Answering defendants deny each and every allegation contained in paragraph marked "5" of plaintiff's Complaint, except admit that on September 22, 2006, defendant, RICHARD WELLS, was employed by NEW ENGLAND MOTOR FREIGHT, INC.

6. Answering defendants deny each and every allegation contained in paragraph marked "6" of plaintiff's Complaint, except admit that Myron P. Shevell is the Chief Executive Officer of NEW ENGLAND MOTOR FREIGHT, INC.

7. Answering defendants deny each and every allegation contained in paragraph marked "12" of plaintiff's Complaint, except admit that Nancy Blakeman is a Vice President of NEW ENGLAND MOTOR FREIGHT, INC.

8. Answering defendants deny each and every allegation contained in paragraph marked "15" of plaintiff's Complaint,

except admit that Craig Eisenberg is a Vice President of NEW ENGLAND MOTOR FREIGHT, INC.

9. Answering defendants deny each and every allegation contained in paragraph marked "18" of plaintiff's Complaint, except admit that Jon Shevell is a Vice President of NEW ENGLAND MOTOR FREIGHT, INC.

10. Answering defendants deny each and every allegation contained in paragraph marked "26" of plaintiff's Complaint, except admit that on September 22, 2006, defendant, RICHARD WELLS, was employed by NEW ENGLAND MOTOR FREIGHT, INC.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

11. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" in the First Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

12. Answering defendants deny each and every allegation contained in paragraphs marked "36", "37", "38", "39", "40", "41" and "42" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

13. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action and paragraphs "35" through "42" of the Second Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

14. Answering defendants deny each and every allegation contained in paragraphs marked "44", "45", "46", "47", "48", "49" and "50" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION

15. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action, paragraphs "35" through "42" of the Second Cause of Action and paragraphs "43" through "50" of the Third Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

16. Answering defendants deny each and every allegation contained in paragraphs marked "52", "53", "54", "55", "56", "57" and "58" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION

17. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action, paragraphs "35" through "42" of the Second Cause of Action, paragraphs "43" through "50" of the Third Cause of Action and paragraphs "51" through "58" of the Fourth Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

18. Answering defendants deny each and every allegation contained in paragraphs marked "60", "61", "62", "63", "64", "65" and "66" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION

19. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action,



paragraphs "35" through "42" of the Second Cause of Action, paragraphs "43" through "50" of the Third Cause of Action, paragraphs "51" through "58" of the Fourth Cause of Action and paragraphs "59" through "66" of the Fifth Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

20. Answering defendants deny each and every allegation contained in paragraphs marked "68", "69", "70", "71", "72", "73" and "74" of plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SEVENTH CAUSE OF ACTION

21. Answering defendants repeat, reiterate and reallege each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of plaintiff's Complaint designated as paragraphs "1" through "34" of the First Cause of Action, paragraphs "35" through "42" of the Second Cause of Action, paragraphs "43" through "50" of the Third Cause of Action, paragraphs "51" through "58" of the Fourth Cause of Action, paragraphs "59" through "66" of the Fifth Cause of Action and "67" through "74" of the Sixth Cause of Action inclusive with the same force and effect as though more fully set forth at length herein.

22. Answering defendants deny each and every allegation contained in paragraphs marked "76", "77", "78", "79", "80", "81" and "82" of plaintiff's Complaint.

**AND AS FOR A FIRST AFFIRMATIVE DEFENSE**

23. The plaintiff's claims are barred, or in the alternative, the damages to which the plaintiff may be entitled are limited as may be applicable by the Doctrine of Sudden Emergency and/or Avoidable Consequences and/or Unavoidable Accident and/or Assumption of Risk.

**AND AS FOR A SECOND AFFIRMATIVE DEFENSE**

24. The Complaint filed herein fails to state a cause of action as against these answering defendants upon which relief can be granted.

**AND AS FOR A THIRD AFFIRMATIVE DEFENSE**

25. That any verdict in the within action, for past, present, and future medical care, dental care, custodial care, or rehabilitation services, loss of earnings or other economic loss, should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part of or from collateral source, in accordance with the provisions and limitations of Section 4545 (c) of the CPLR.

AND AS FOR A FOURTH AFFIRMATIVE DEFENSE

26. The plaintiff's sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

The plaintiff did not sustain serious injury as defined by §5102 of the Insurance Law of the State of New York, and her exclusive remedy therefore, is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

The plaintiff's cause of action is barred by Article 15, §5104 of the Insurance Law of the State of New York.

AND AS FOR A FIFTH AFFIRMATIVE DEFENSE

27. The plaintiff has failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in his complaint.

AND AS FOR A SIXTH AFFIRMATIVE DEFENSE

28. Although the defendants deny the allegations as to injuries and damages alleged, these injuries and damages, if any, were caused by intervening, preceding or superceding acts, conduct or negligence or third persons, parties, corporate entities and/or independent agencies over whom these answering defendants had no control or responsibility.

AND AS FOR A SEVENTH AFFIRMATIVE DEFENSE

29. Plaintiff's Complaint must be dismissed or transferred for forum non-conveniens and/or improper venue.

AND AS FOR A EIGHTH AFFIRMATIVE DEFENSE

30. That any injuries and/or damages sustained by plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of these answering defendants.

AND AS FOR A NINTH AFFIRMATIVE DEFENSE

31. The liability of these defendants, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

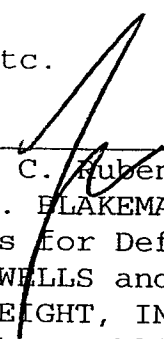
AND AS FOR AN TENTH AFFIRMATIVE DEFENSE

32. Plaintiff's Complaint does not comply with C.P.L.R. §3017(c) and must be dismissed and/or stricken as to the improper paragraphs and content.

WHEREFORE, defendants, RICHARD WELLS and NEW ENGLAND MOTOR FREIGHT, INC., demand judgment against plaintiff dismissing the Verified Complaint against these answering defendants, together with all costs and disbursements of this action.

Dated: Valley Stream, New York  
February 23, 2007

Yours, etc.

By:  Todd C. Rubenstein  
ROBERT M. FLAKEMAN & ASSOCIATES  
Attorneys for Defendants  
RICHARD WELLS and NEW ENGLAND  
MOTOR FREIGHT, INC.  
108 South Franklin Avenue, Suite 1  
Valley Stream, NY 11580  
(516) 825-7575

TO: James L. Hyer, Esq.  
Faga Savino, LLP  
Attorneys for Plaintiff  
1200 Waters Place, Suite 301  
Bronx, New York 10461  
(718) 931-6000

VERIFICATION

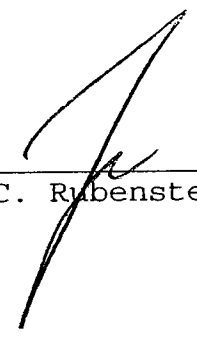
State of New York

SS.:

County of Nassau

I, Todd C. Rubenstein, Esq., being duly sworn, state:

I am the attorney for defendants in this action. The foregoing Verified Answer is true to my knowledge, except as to matters therein stated on information and belief and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my knowledge are correspondence and other writings furnished to me by defendants and interviews with officers and employees of defendant corporation. This verification is not made by defendant corporation because it is a foreign corporation.

  
\_\_\_\_\_  
Todd C. Rubenstein

Dated: February 23, 2007

AFFIDAVIT OF MAILING

STATE OF NEW YORK )

ss.:

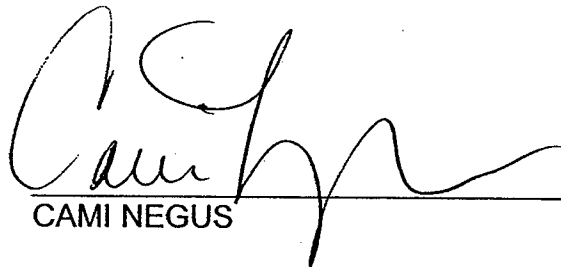
COUNTY OF NASSAU )

CAMI NEGUS, duly sworn, deposes and says that:

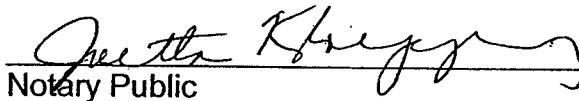
1. I am not a party to the within action, am over 18 years of age, and reside in Albertson, New York.

2. On the 27<sup>th</sup> day of September, 2007, I served the within NOTICE OF MOTION; AFFIRMATION AND EXHIBITS "A" THROUGH "C" by enclosing a copy of same in a postage paid envelope and depositing same in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, and was addressed to the last known residence as follows:

James L. Hyer, Esq.  
Faga Savino, LLP  
1200 Waters Place, Suite 301  
Bronx, New York 10461

  
\_\_\_\_\_  
CAMI NEGUS

Sworn to before me this  
27<sup>th</sup> day of September, 2007

  
\_\_\_\_\_  
Notary Public

**JOETTA KLOEPPING**  
Notary Public, State of New York  
No. 30-4764166  
Qualified in Nassau County  
Commission Expires March 30, 2010

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

-----X

**HECTOR LOPEZ,**

**Plaintiff,**

**-against-**

**AMENDED  
COMPLAINT**

**Index No.: 24736-06**

**RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC.,**

**Defendants.**

-----X

1. The Plaintiff above named by KEVIN B. FAGA, ESQ., attorney, complaining of the Defendants respectfully shows to the Court and alleges:

**AS AND FOR THE FIRST CAUSE OF ACTION**

2. That at all times hereinafter mentioned, the Plaintiff, HECTOR LOPEZ, was and still is an individual residing in the State of New York, County of Bronx, at 2145 Chatterton Avenue, Apt. 2R, Bronx, New York 10472.
3. That upon information and belief, at all times hereinafter mentioned, the Defendant, RICHARD WELLS, (hereinafter referred to as "WELLS"), was and still is an individual residing at 58 Wells Terrace, Meriden, Connecticut 06450.
4. That upon information and belief, at all times hereinafter mentioned, the Defendant, NEW ENGLAND MOTOR FREIGHT, INC., (hereinafter referred to



as "NEW ENGLAND"), was and still is a foreign corporation, a domestic profit corporation of the State of New Jersey, doing business within the State of New York, with principal offices located at 1-71 North Avenue East, Elizabeth, New Jersey 07201 and a mailing address at P.O. Box 1305, Paramus, New Jersey 07653.

5. That upon information and belief, at the time of impact with the Plaintiff, Defendant WELLS was an agent, officer, employee, contractor, subcontractor or otherwise employed by Defendant NEW ENGLAND.
6. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND owned and continues to own a certain 1998 Volvo, bearing New Jersey state Plate Number AE849B, (hereinafter referred to as the "Vehicle").
7. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND insured and continues to insure the Vehicle.
8. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND controlled and continues to control the Vehicle.
9. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND maintained and repaired and continues to maintain and repair the Vehicle.

old al.

10. That upon information and belief, at all times hereinafter mentioned, Defendant NEW ENGLAND managed and supervised and continues to manage and supervise the Vehicle.

11. That upon information and belief, on or about September 22, 2006 the Defendant, RICHARD WELLS, was acting as an agent, officer, employee, contractor, or sub-contractor of Defendant NEW ENGLAND.

12. That upon information and belief, on or about September 22, 2006 the Defendant, RICHARD WELLS, was driving Northbound on Interstate 87 and collided into the Plaintiff.

13. That upon information and belief, Defendant WELLS operated the Vehicle in a dangerous, unreasonable and reckless manner, in that the vehicle was operated in a manner that the Vehicle caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.

14. That upon information and belief, Defendant WELLS was at all times hereinafter mentioned in possession and control of the vehicle.

15. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87 in the County of Orange, State of New York, without any negligence on his part he was caused to be impacted by Defendant WELLS causing him to sustain the injuries hereinafter alleged.

suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

19. That by reason of the aforesaid, this Plaintiff has been damaged in a sum of exceeding the jurisdictional limits of all lower courts in an amount to be determined at trial.

**AS AND FOR THE SECOND CAUSE OF ACTION**

20. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraph 1 through 34 with the same force and effect as if fully set forth herein.
21. That upon information and belief, Defendant NEW ENGLAND operated the Vehicle in a dangerous, unreasonable and reckless manner in that the Vehicle was operated in a manner that the Vehicle, caused injury to the Plaintiff, by colliding with Plaintiff and causing the Plaintiff injuries.
22. That upon information and belief, Defendant NEW ENGLAND was at all times hereinafter mentioned in possession and control of the Vehicle.
23. That on or about September 22, 2006, while the Plaintiff was lawfully was situated on the shoulder of Interstate 87 in the County of Orange, State of New

York, without any negligence on his part he was caused to be impacted by the Vehicle owned, operated and controlled by the Defendant NEW ENGLAND causing him and sustain the injuries hereinafter alleged.

24. That said accident and the injuries to Plaintiff resulting therefrom were caused wholly and solely through the negligence Defendant NEW ENGLAND and without any contributory negligence on the part of the Plaintiff, by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the Vehicle was not kept under reasonable control by the Defendant; that the Defendant operated the Vehicle in an unsafe, unreasonable, reckless and negligent manner; that the Defendant operated the Vehicle in an unsafe, unreasonable, reckless and negligent manner; that the Vehicle was kept and maintained by the Defendant in a negligent, dangerous and unsafe condition; that the Vehicle was kept and repaired by the Defendant in a negligent, dangerous and unsafe condition; that the Defendant managed and supervised the operation the Vehicle in an unsafe, unreasonable, reckless and dangerous manner; that the Defendant failed to employ agents, officers, employees, contractors, subcontractors qualified and able to operate, control, maintain and repair the Vehicle in a safe, reasonable and lawful manner; that the Defendant failed to train its agents, officers, employees, contractors, subcontractors to instruct enable them to be qualified and able to operate, control, maintain and repair the Vehicle in a safe, reasonable and lawful manner; that the Defendant operated, controlled, maintained, repaired, managed and supervised the Vehicle in violation of the

statutes of the State of New York and other applicable rules and/or regulations; all of which was known or should have been known to the Defendant.

25. That the Plaintiff's injuries and damages were caused solely and wholly by the negligence of Defendant NEW ENGLAND and by the Defendant's ownership, operation, control, maintenance, repair, management, and supervision of the Vehicle, in violation of the statutes of the State of New York and other applicable rules and/or regulations, without any fault or negligence of the Plaintiff contributing thereto in any manner, and said injuries are serious, severe and permanent as hereinafter set forth.


26. That by reason of the aforesaid, the Plaintiff was caused to sustain serious, severe and painful personal injuries, some of which are permanent and lasting in their nature; was caused to be rendered sick, sore, lame and disabled; was caused to suffer great pain and anguish and will in the future continue to so suffer; was caused to seek medical care, attention and treatment in an effort to cure and/or alleviate the said injuries; was caused to be incapacitated from his usual duties, activities and/or employment and will in the future continue to be so incapacitated.

27. That by reason of the aforesaid, this Plaintiff has been damaged in a sum of exceeding the jurisdictional limits of all lower courts in an amount to be determined at trial.

**WHEREFORE**, Plaintiff demands judgment against the Defendants on the first cause of action in a sum exceeding the jurisdictional limits of all lower courts to be determined at trial, together with the interest, cost and disbursements of this action, and Plaintiff demands judgment against the Defendants on the second cause of action in a sum exceeding the jurisdictional limits of all lower courts to be determined at trial, together with the interest, cost and disbursements of this action, and all other such relief that this Court may deem just and proper.

**Dated:**        **Bronx, New York**  
                 **October 19, 2007**

**FAGA SAVINO, LLP**

By:   
**KEVIN B. FAGA, ESQ.**  
*Attorneys for the Plaintiff*  
**1200 Waters Place, Suite 301**  
**Bronx, New York 10461**  
**(718) 931-6000**

**TO:    Todd C. Rubenstein, Esq.**  
**Abrams, Fensterman, Fensterman, Eisman,**  
**Greenburg, Formato & Einiger LLP.**  
***Attorneys for the Defendants***  
**1111 Marcus Avenue, Suite 107**  
**Lake Success, New York 11042**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

**Index No.: 24736/06**

-----X  
**HECTOR LOPEZ,**

**Plaintiff,**

**-against-**

**AFFIRMATION OF  
SERVICE**

**RICHARD WELLS, NEW ENGLAND MOTOR  
FREIGHT, INC.,**

**Defendants.**  
-----X

James L. Hyer, Esq., an attorney duly admitted to practice law before the courts of the State of New York, under penalty of perjury affirms the following to be true:

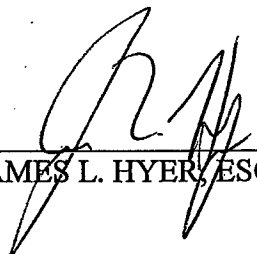
I am not a party to the above-captioned action.

On November 16, 2007, I served the within AMENDED COMPLAINT and Supporting Papers on the following persons:

TODD C. RUBENSTEIN, ESQ.  
ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, GREEMBERG, FORMATO & EINIGER, LLP.  
1111 Marcus Avenue, Suite 107  
Lake Success, New York 11042

By placing same in a pre-paid post wrapper and depositing same into a mail box maintained exclusively by the United States Postal Service at 1200 Waters Place, Bronx, New York.

Dated: Bronx, New York  
November 16, 2007

  
\_\_\_\_\_  
JAMES L. HYER, ESQ.

STATE OF NEW YORK, COUNTY OF BRONX

ss.:

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

X  
ATTORNEY'S  
CERTIFICATION

certify that the annexed AMENDED COMPLAINT have been compared  
by me with the original and found to be a true and complete copy thereof.

ATTORNEY'S  
VERIFICATION

say that: I am the attorney of record, or counsel with the attorney(s) of record for

I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters  
therein which are stated to be alleged on information and belief, and as to those matters I  
believe them to be true. My belief, as those matters therein not stated upon knowledge, is  
based upon the following:

I affirm that the foregoing statements are true under penalties of perjury.

Dated: October 23, 2007  
Bronx, New York

\_\_\_\_\_  
KEVIN B. FAGA, ESQ.